

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0190, Michael H. Vogel v. John Hauser, the court on October 15, 2004, issued the following order:

The respondent, John Hauser, appeals an order of the trial court granting summary judgment to the petitioner, Michael H. Vogel, on his motion for specific performance of a purchase and sale agreement. He contends that a genuine issue of material fact existed as to whether the agreement was based on negligent or fraudulent misrepresentation and whether the agreement contained an ambiguity concerning development rights. We affirm.

“In reviewing the trial court’s grant of summary judgment, we consider the affidavits and other evidence, and all inferences properly drawn from them, in the light most favorable to the non-moving party.” Godbout v. Lloyd’s Ins. Syndicates, 150 N.H. 103, 105 (2003). “If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper.” *Id.*

We will assume without deciding that the respondent retains standing to pursue this appeal following his conveyance of the property that is the subject of this appeal. He first argues that the petitioner misrepresented that the abutting property owners in the condominium development did not object to the scope of the proposed development on the conveyed lot. We will assume without deciding that the statement was false and material. The trial court found that the respondent was the principal owner and developer of the condominium development and as such could have verified this representation. *See Bursey v. Clement*, 118 N.H. 412, 415 (1978) (buyer’s competence and opportunity to investigate truth of material fact is factor in ascertaining liability). Moreover, the purchase and sale agreement contained an integration clause stating that all representations, statements and agreements previously made between the parties were incorporated and that neither party relied on any statements or representations not embodied therein. We therefore find no error based on the respondent’s first argument.

Nor do we find the purchase and sale agreement ambiguous. The respondent argues that he reserved the development rights to the land that is the subject of the purchase and sale agreement. In addition to the integration clause, the agreement provided it was for “[l]and only” and contained no reference to a reservation of development rights under “Additional Conditions.” Rather, listed as an additional condition was the provision that the “Buyer agrees to construct no more than four (4) dwelling units on the property.” Accordingly, we find no error based on the respondent’s second argument.

In Case No. 2004-0190, Michael H. Vogel v. John Hauser, the court on October 15, 2004, issued the following order:

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We find the respondent's third argument concerning the appellee's alleged lack of cooperation to be without merit and warranting no further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**

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